IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

CRL.A.No. 1249 of 2004()

CC.163/2001 of JUDL.MAGISTRATE OF FIRST CLASS COURT, RANNI

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APPELLANT: COMPLAINANT:

K.T.MATHAI, S/O. SKARIA THOMAS,
KUKZHIPARMBIL HOUSE, EATTICHUVADU, ANGADI, RANNY.

BY ADV. SRI.S.SANTOSH KUMAR (PERUNAD)

RESPONDENTS: ACCUSED:

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1. V.J.MATHEW, S/O. YOHANNAN,
VAZHAYIL HOUSE, EATTICHUVADU, ANGADI, RANNY.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.P.HARIDAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 2-3-2007 , THE COURT ON 02/03/2007 DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl.A. No. 1249 of 2004

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Dated this the 2nd day of March, 2007

JUDGMENT

The appeal is filed by the complainant in C.C.No.163/2006 on the file of the Judicial Magistrate of the First Class, Ranni. The complaint was filed under section 138 of the Negotiable Instruments Act. In the complaint it is stated that the 1st respondent borrowed an amount of Rs.85,000/0 from the appellant and in discharge of the said debt, the 1st respondent issued Exts.P1 and P2 cheques in favour of the appellants. It is also stated that when the cheques were presented for encashment, they were dishonoured on the ground of insufficiency of funds in the account of the 1st respondent. To prove the case, the appellant himself was examined as PW1 and Exts.P1 to P7 were marked. After closing the prosecution evidence, the 1st respondent was questioned under section 313 Cr.P.C. He denied the transaction and stated that he had money transaction with the appellant from 1984 onwards and he used promissory notes and blank cheques at the time of every such transaction and the said documents would be returned on repayment of the amount. He also stated that he received Rs.85,000/- from the appellant on 1-7-2000 on executing a promissory note in favour of the appellant and he

issued Exts.P1 and P2 cheques. He further stated that though he repaid the entire amount after two months of the said transaction, the documents were not returned. To substantiate his case, DW1 to DW3 were examined and Exts.D1 to D4 were marked. Considering the entire evidence, the trial court found that the appellant could not prove that the 1st respondent had committed the offence under section 138 of the Negotiable Instruments Act.

2. It has come out in evidence that the appellant had issued Ext.B1 lawyer's notice demanding an amount of Rs.85,000/- covered by the promissory note alleged to have been issued by the 1st respondent. The appellant is silent regarding the date of the money transaction involved in this case. The trial court found that the allegation that the appellant had lent Rs.85,000/- on 15-9-2000 without any documentary proof was against the ordinary human conduct, as he had obtained a promissory note for a similar transaction on 1-7-2000. The trial court also found that the fact that the amount covered by the transaction on 1-7-2000 was due while giving the amount on 15-9-2000 without any documentary proof would make the latter transaction highly improbable. The case set up by the 1st respondent is that he had received an amount of Rs.85,000/- from the appellant on 1-7-2000 on the basis of a promissory note and he had not received any amount as claimed in the present case.

3. In the above circumstances, this Court is of the view that the finding of the trial court requires no interference by this Court. Hence, the appeal is dismissed.

K.Thankappan,
Judge.

mn.

K. Thankappan,J.

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W.P.(C) No. /2006

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Judgment

10-11-2006